IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WP(C).No. 28396 of 2006(E)

PETITIONER:

SABU MATHEW, KALAYANTHADOM HOUSE,
CHINGAVANAM POST, NATTAKAM VILLAGE,
KOTTAYAM DISTRICT.

BY ADV. SRI.P.KURUVILLA JACOB

RESPONDENT:

THE SECRETARY, NATTAKOM GRAMA
PANCHAYATH, MARIAPPALLY POST,
NATTAKAM VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.LIJI.J.VADAKEDOM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28396 OF 2006

Dated this the 26th day of March, 2007

JUDGMENT

The petitioner who was the convenor of a beneficiary committee constituted for executing the work of the respondent-Panchayat in the name 'improvement to Chingvanam - Puzhakkara - Valekadavu - FACT Kadavu Thodu' is aggrieved by what he describes as the illegal and arbitrary action on the part of the respondent due to the effect of two recoveries of approximately Rs.3,24,000/- from the second part-bill which was submitted by the petitioner for a total amount of Rs.12,41,156/-. Petitioner has filed the Writ Petition with the following prayers:

i. issue a writ of mandamus or any other appropriate writ, order or direction to the respondent, directing to release the two illegal recoveries made from petitioner's second admitted part bill amount of Rs,12,42,516/- as explained in para 5 above, within a specific period of time;

ii. issue a writ of mandamus or any other appropriate writ, order or direction to the respondent, directing to pay 12% interest to the amount illegally recovered from petitioner's second part bill with effect from 20.10.04 till payment.

2. Petitioner submits that two illegal recoveries have been effected from the second part bill as per the details given in paragraph 5 of the Writ Petition. The first illegal recovery is of Rs.1,24,151/- towards retention deposit even though for the type of work executed by the beneficiary committee under the convenorship of the petitioner, retention deposit could not have been recovered at all. The second illegal recovery, petitioner points out is that while adjusting the accounts related to petitioner's second part-bill a sum of Rs.2 lakhs was deducted towards supply of rice under the SGRY Scheme, even though the total quantity of rice actually released was only 1747 kgms having value of Rs.10,831/-. Thus the contention is that the recovery of Rs.2 lakhs on account of rice allegedly supplied while the value of rice actually released was Rs.10,831/- was illegal. In other words, the contention is that retention of Rs.1,89,169/- towards price of rice was illegal. The case of the petitioner thus is that a total amount of Rs.3,13,320/;- is illegally retained.

3. The Panchayat has filed a counter affidavit on 9.1.07 producing Ext.R1(a) which is copy of the petitioner's request dt.10.05.2005. Ext.R1(b) is copy of the request for part bill received by the respondent on 29.09.2004 is also produced. Ext.R1(c) produced along with this counter affidavit is copy of the statement of accounts

prepared for giving the part bill and Ext.R1(d) is copy of the agreement No.114/03-04 executed between the petitioner and the Panchayat in connection with the work with which the petitioner was entrusted. Later pursuant to a direction issued by this Court the Panchayat produced the originals of the part bill and agreements dt.2.1.04 and 5.1.04 as Exts.R1 (e) to (g). Government also produced Ext.R1(h) which is copy of the Government Order No.GO(MS) NO.61/2003/Planning dt.29.07.2003 to contend that 20% of the assessment amount can be deducted as beneficiary contribution.

4. I have heard the submissions of Sri.P.Kuruvila Jacob, learned counsel for the petitioner and those of Sri.Liji. Vadakkedom, Standing Counsel for the Panchayat.

5. I have considered the pleadings, the documents placed on record and the submissions. Concededly the work in question is not a tendered work. It is a work executed through a beneficiary committee and Ext.R1(f) is the agreement which has been executed in relation with this work. I do not find any clause in Ext.R1(f) authorising retention of any portion of the bill amount either by way of beneficiary contribution or retention deposit or any account. Mr. Liji Vadakkedom referred to Rule 13(4) of the Kerala Panchayat Raj execution of Public Work Rules and submitted that Ext.R1(g) is an additional agreement executed as per

Rule 13(1) and Rule 13(4). Mr.Vadakkedom referred to Clause 10 and submitted that the Panchayat is authorised to deduct up to 10% of all the bill amounts. Mr.Kuruvila Jacob submitted that though it is true that Ext.R1(g) contains the signature of the petitioner, significantly it is not signed by the Secretary of the Panchayat and Ext.R1(g) is totally irrelevant and was unwarranted.

Having considered the rival submissions made at the Bar, I am of the view that recovery of a total amount of Rs.2 lakhs from the second part bill of the petitioner towards supply of rice under the SGRY Scheme was wrong since the value of the rice actually supplied was only Rs.10,831/-. The Panchayat was entitled to deduct only Rs.10,831/-. As regards the sum of Rs.1,24,151/-, recovered towards retention also, I do not find any contractual obligation on the part of the petitioner to suffer such a recovery. However, considering the interest of the Panchayat and the circumstance that even according to the petitioner the execution of the work is not completed yet, I am inclined to permit retention of a portion of the bill amount to be released after the said work is satisfactorily completed. Under both the accounts i.e. towards retention deposit and towards value of the rice supplied, the Panchayat will retain a sum of Rs. 75,000/- only and release the entire balance amounts payable to the petitioner. The Panchayat is directed to

release the balance amount recovering only Rs.75,000/- to the petitioner immediately i.e. within three weeks of receiving a copy of this judgment and the petitioner is directed to complete execution of the work within another six weeks of receiving payment. The petitioner's claim for release of payment of interest is left open to be decided in Civil proceedings if the petitioner chooses to initiate such proceedings within one month of receiving copy of this judgment. No costs.

PIUS C. KURIAKOSE, JUDGE

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